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American Institute of Accountants

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BEFORE THE COMMITTEE ON THE JUDICIARY

House of Representatives

80th Congress, 1st Session

H. R. 2657

**STATEMENT OF AMERICAN INSTITUTE OF
ACCOUNTANTS URGING AMENDMENT
OF H. R. 2657.**

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STATEMENT OF AMERICAN INSTITUTE OF ACCOUNTANTS URGING AMENDMENT OF H. R. 2657

The American Institute of Accountants is the national organization of certified public accountants in the United States with a membership of more than ten thousand certified public accountants representing every state in the Union. Its members are vitally interested in H. R. 2657, inasmuch as that bill has to do with practice before the Treasury Department and other agencies before which accountants have appeared for many years.

On behalf of its members, the American Institute of Accountants opposes the passage of the bill in its present form.

Basis of Opposition.

This bill has two totally distinct aspects. In its first aspect the bill provides for a Credentials Committee to register lawyers who wish to practice before Government agencies. This aspect of the bill is beneficial to lawyers who practice before a number of agencies, it does not injure the accountants or other practitioners, and, except

for the expense involved in creating another Government agency, there seems to be no harm in it.

In its second aspect, however, the bill provides that all persons, lawyers or non-lawyers, who practice before Government agencies must first obtain credentials from the Committee. In this aspect the bill abridges the long recognized right of accountants to practice before the Treasury Department. It affects practice by many non-lawyers before other Government agencies. It tends to create a monopoly in lawyers, as to certain forms of practice at least, and, to a considerable extent, it takes away from particular agencies the right to determine who shall practice before them. In many respects the bill discriminates between lawyers and non-lawyers. There is no discernible public benefit in these provisions of the bill.

Present Provisions of Administrative Procedure Act.

As recently as June 11, 1946, after a great deal of study and discussion, the Administrative Procedure Act was enacted with the following provision:

“Sec. 6. * * *

“(a) * * * Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding.* * * Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.”

This provision permits each agency to determine to what extent there may be representation of parties by non-lawyers. That had been the situation in the past, it is the situation now, and the American Institute of Accountants respectfully asks that it be maintained.

Practice by Accountants Before the Treasury Department.

The Act of July 7, 1884, 23 Stat. 258, provided:

"That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his department * * *."

The present regulations are found in Department Circular No. 230, which provides in effect that lawyers and certified public accountants may be enrolled without examination, and that other persons may be enrolled after "passing a prescribed examination." Of course, the reason for this distinction is that certified public accountants, like lawyers, have already been subjected to a severe examination by the Boards of Accountancy of the states from which they have received their certificates and have also qualified morally. Department Circular No. 230 provides detailed standards of conduct for attorneys and agents admitted to practice.

The status of accountants before the Treasury Department was well set forth in *New York County Lawyers Association v. Bercu*, 15 Law Week 2527, decided in the Supreme Court of New York County as recently as March 18, 1947. It was there held that an accountant who had given advice on an income tax matter was not practicing law, the Court saying:

"In this country, from the inception of income taxation, the tax field, both federal and state, and on the side of the Government as well as the taxpayer, has been to a large extent turned over to the accounting profession. The same was true in Great Britain and in Canada. This was entirely natural, for the new tax statutes certainly involved the application of proper accounting practices. The bar was not prepared to deal with these specialized problems; the accountants were and they stepped in immediately. On the federal side both the Treasury Department and the Tax

Court of the United States admitted certified public accountants to practice before them. The courts recognized the validity of that action."

In *Dobson v. Commissioner*, 320 U. S. 489, the Supreme Court held that a ruling of the Tax Court on an accounting question was one of fact, and therefore not reviewable. Mr. Justice Jackson, speaking for the Court, said:

"The error of the court below consisted of treating as a rule of law what we think is only a question of proper tax accounting."

According to our best information there are at the present time approximately 70,000 attorneys and agents admitted to practice before the Treasury Department, of whom about 20,000 are certified public accountants.

Informal Practice Before Other Agencies

There is, of course, an enormous amount of informal practice before other Government agencies in which representation by lawyers is unnecessary and undesirable. Accountants, for example, frequently appear before branches of the Securities & Exchange Commission on behalf of corporate clients to explain balance sheets and income statements which they have certified. Whether these accountants appear as witnesses or as practitioners may be debatable, but the fact is that they are constantly there, and the practice is a normal one and of great benefit to American business.

Similar situations exist with other agencies. We find trafficmen appearing before the Interstate Commerce Commission. Agents who are not lawyers may solicit patents. Chemists and biologists appear before the Department of Agriculture. Customs brokers appear before the Treasury Department. Examples can be multiplied.

Such informality of practice before administrative agencies is highly desirable. The problems under consideration

are usually factual rather than legal, and in their factual aspects they are often highly technical. The agencies themselves are staffed to a great extent by accountants, engineers and other technical experts who are not lawyers, and parties who must appear before these representatives of the Government need representatives of their own who have similar training. While representation by lawyers is sometimes desirable and necessary, on many occasions the presence of a lawyer would be of little or no value, and certainly the party involved should have complete freedom of choice as regards representation.

All such appearances, however, would come within the definition contained in Section 2 of H. R. 2657; " 'Practice' means any form of appearance or participation in any agency proceeding other than as a witness * * *."

Objectionable Features of H. R. 2657. Restricted of Practice by Non-Lawyers and Obstructions Placed on Any Practice by Them.

As has been stated, there is no objection whatever to the part of the bill which provides for the establishment of a Credentials Committee to register lawyers and thus make it unnecessary for a particular lawyer to be admitted to practice before a multitude of agencies. The difficulty is that the bill does not stop there but brings all other practitioners within its purview.

The underlying purpose of the bill seems to be to convert all Government agencies into quasi-courts where lawyers shall have a superior right to practice. In proceedings under sections 7 and 8 of the Administrative Procedure Act, which have to do with rule making and adjudication and "in connection with any form of compulsory process" H. R. 2657 provides that no one but lawyers shall be permitted to appear. Non-lawyers may not even be authorized to do so by the agency before whom the proceeding

is pending (Sec. 6). A corporation may not even appear by one of its officers in a proceeding conducted under sections 7 or 8 of the Administrative Procedure Act, (Sec. 2). The bill provides that "presiding and deciding officers in any agency proceeding shall conduct themselves in accordance with the similar requirements applicable to members of the judiciary" (Sec. 4). The present informality of many agency proceedings is thus to be done away with completely.

It is true that the bill provides that persons other than lawyers may be admitted to practice before particular agencies, except in cases involving Sections 7 or 8 of the Administrative Procedure Act or in connection with any form of compulsory process. But in every case the agency must first certify to the Commission that "in its informed judgment the applicant possesses scientific training, experience, special competence, peculiar technical ability, knowledge of legal requirements, and other qualifications requisite for the adequate performance of the duties of a practitioner for the protection of clients and the attainment or preservation of their rights" (Sec. 6). An agency may hesitate a long time before it certifies that a non-lawyer possesses "knowledge of legal requirements", or that an accountant possess "scientific training." Thereafter the Credentials Committee is to "require evidence that the applicant possesses knowledge of professional responsibilities as well as good moral character, repute, and fitness." This puts the accountant entirely at the mercy of a committee of five, at least four of which must be lawyers (Sec. 3), who may very well think, as some lawyers do, that an accountant should not appear before the Treasury Department anyway. Thereafter only "*revocable* credentials" are to be issued (Sec. 6). As if this were not enough, there is a provision that "nothing in this Act shall be deemed to permit any person to practice law in any place or render service save the authorized participation in agency proceedings by the holders of credentials", which may mean almost anything (Sec. 6).

Discrimination Between Lawyers and Others.

A lawyer may be enrolled simply by showing that he is a member in good standing of the bar of the highest court of any state, territory, possession or the District of Columbia, and his own statement that he is engaged in the active practice of law in such jurisdiction. Thereupon credentials must be issued (Sec. 5). On the other hand a non-lawyer must obtain the certificate above described after examination or investigation by the agency, and the Credentials Committee thereafter has considerable discretion as to his admission. If admitted he obtains merely a revocable credential. Careful safeguards are thrown around any discipline of lawyers. There must be disbarment proceedings, and a court, "proceeding de novo", may try and determine the facts (Sec. 7). A non-lawyer may, however, be disbarred by the agency, and in such case his credentials are to be revoked at once by the Committee (Sec. 7).

Expense and Duplication Involved.

We believe that the proponents of the bill have not fully considered the vast scope of the work proposed for the Committee. As stated above there are 70,000 practitioners in the Treasury Department alone. The number of practitioners before all of the Government agencies is enormous. Why should a master list of these practitioners be made. Each agency can best judge what non-lawyers it should admit to practice and on what terms, and each agency can provide for the disbarment of such of them as merit the same. No reason has been suggested from the standpoint of the public for taking any of this out of the hands of the agencies and for making an enormous list of practitioners supervised by Government officials and clerks, all of whom must be paid by somebody.

A Simple Bill Can be Devised.

The bill can readily be amended to provide for the admission of lawyers to all agencies. Such amendments are indicated in an appendix hereto. The American Institute of Accountants would welcome the passage of the bill as so amended, in order that a lawyer may practice before any and all Government agencies. Such a bill would help the lawyers, and hurt no one.

We therefore request that H. R. 2657 be amended as indicated in the appendix hereto.

Respectfully submitted,

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April 15, 1947.

APPENDIX.

Changes in H. R. 2657 Requested by American Institute of Accountants

Change title to "To establish a single bar for lawyers practicing before administrative agencies."

In Section 1, change "Practitioners" to "Lawyers."

In Section 2, change the last sentence to read "'Practice' means any form of appearance or participation in any agency proceeding other than as a witness."

Strike out Section 4.

Change Section 5 to Section 4, and strike out the last two sentences thereof.

Strike out Section 6.

Change Section 7 to Section 5 and strike out the third sentence thereof.

Change Section 8 to Section 6. Strike out the first sentence thereof. In the second sentence change "Section 5" to "Section 4". In line 17, page 9, immediately before the words "If any provision * * *", insert "Except as provided in this Act, each agency shall have power to prescribe rules and regulations governing the recognition of agents and other persons practicing before it, and nothing contained in this Act shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding." *

* This follows the language of the Administrative Procedure Act, Sec. 6 (a).